IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12138 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI ALIAS HAMIDBHAI MUSABHAI NAGARIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12138 of 2001

MR PJ KANABAR for Petitioner No. 1

MR KAMAL TRIVEDI Additional Advocate General with

MR AD OZA GP with AY KOGJE, AGP for Respondents No. 1-2

MR TUSHAR MEHTA for Respondent No. 3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 07/03/2002

ORAL JUDGEMENT

Rule. Mr. A.Y. Kogje, learned AGP waives service of Rule on behalf of respondent Nos. 1 and 2.

Heard Mr. Kanabar, learned advocate for the petitioner, Mr. Kamal Trivedi, learned Additional Advocate General for respondent Nos. 1 and 2 and Mr. Tushar Mehta for respondent no. 3. By consent Rule is fixed forthwith. Mr. Kanabar, learned advocate has taken me through the petition and the documents attached thereto. It is his submission that the petitioner has filed suit for declaration and injunction in respect of the property in question and in the suit the petitioner has prayed that the respondent, his men, agent and servants be restrained from disturbing the possession of the open land admeasuring 3200 sq. ft. situated behind the Dolatram School, which is in possession of the petitioner and accordingly, sought for injunction and declaration. In the said suit, the petitioner has also filed application under Section 39 Rule 1,2, Ex. 5 for seeking injunction and the learned Judge has while disposing of the said application has confirmed the injunction granted earlier as per order dated 13.12.1994. It is the case of the petitioner that the petitioner had approached various authorities by writing letters namely to the Dy. Executive Engineer, R & B, Chief Officer of the Nagarpalika and other revenue officers of the State, informing the said authorities that the suit filed by him being Regular Civil Suit No. 299 of 1993 is pending and the trail court has also granted injunction, which is still in force and accordingly, the possession on the land is not required to be disturbed. It is the case of the petitioner that inspite of writing letter to the said authority, the petitioner has not received any communication and the petitioner came to know that the authority may take steps to take possession of the land and accordingly, the petitioner has approached this Court for necessary direction.

2. Considering the case of the petitioner, notice was issued to the respondents and interim relief was granted as prayed for. No affidavit-in-reply is filed by the respondent no.3 Municipality. An affidavit-in-reply is filed by Shri P.M. Dobaria, Mamlatdar, Amreli dealing with the petition and contentions raised in the petition and as per para 8, it is the case of the respondent that the land in question is part of the road land which is running between connecting Tower Road and Chandni Chowk. It is also stated that the petitioner though has not made any permanent construction has cordoned a huge plot of land belonging to the Government and admeasuring 3200 sq. feet Government land vested with the nagarpalika for the public purpose and the petitioner is doing business of sale and purchase of scrap. It is further found from para 9 of the reply affidavit that the petitioner has

approached this court merely on apprehension and as and when the circumstances so required to deal with the petitioners property referred to in the petition, the same will be done by issuing a notice followed by the compliance of the principles of natural justice.

4. Mr.Kanabar, learned advocate has submitted that as the affidavit-in-reply was served to him only on 6th March, 2002, it was not possible for him to file rejoinder to this affidavit-in-reply. However, it is his contention that the land is not of the Government and it is contended that the petitioners had approached this Court merely on apprehension and this court is not required to entertain the petition at this stage.

5. Considering the submissions and without expressing anything on the contentions raised before me in this proceedings, this court is of the view that suit filed by the petitioner is still pending in the court of learned Civil Judge(SD), Amreli and in view of the order passed below Ex. 5 granting injunction in favour of the petitioner is in force till the disposal of the suit. Accordingly, it will not be possible for the municipality to take any step till the out come of the suit and in view of the stand taken by the respondent that the petitioner has approached this court merely on apprehension that his properties are likely to be demolished and further that as stated by Mr. Kamal Trivedi, learned Additional Advocate General that before taking any action, the authority will follow due process of law, this Court is of the view that at this stage, this court is not required to entertain the petition and accordingly, petition is disposed of. Rule is made absolute. Interim relief granted earlier stands vacated. However, there shall be no order as to costs. D.S. permitted.

(D.K.Trivedi,J.)

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